

**REMARKS**

After the foregoing Amendment, claims 1 – 2 and 7 – 10 are currently pending in this application, as amended. Claims 3 – 6 are cancelled without prejudice. Claims 1, 7, 8 have been amended. No new matter has been introduced into the claims by these amendments.

**Claim Rejections - 35 USC §102b**

Claims 1 – 3 and 5 – 10 were rejected in the Action under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 2,641,278 to Eplett et al. Claims 1 – 4 and 7 – 10 were rejected as anticipated by U.S. Patent No. 4,862,913 to Wildfang.

Applicant respectfully traverses the rejections. The invention as currently claimed in claim 1 is a backflow preventer that includes an insert housing with a housing interior in which a valve member is located. The valve member contacts a valve seat in a closed position thereof and can be moved against a restoring force from the closed position into an open position. The housing interior has, in a movement zone of the valve member, an interior section, which has a greater open cross section relative to an outer periphery of the valve member. To allow play-free guidance of the valve member, a spring-elastic valve member guide is included. The guide has at least two spring arms, formed on an inner portion of the insert housing, between which the valve body slides. The spring arms are arranged with

free spring arm ends thereof in a region of the valve seat. The spring arms contact the housing inner wall and/or the valve member. The spring-elastic valve member guide is effective between the valve member and a housing inner wall surrounding the interior section.

Eplett discloses a pressure relief valve having a threaded portion for connection to a threaded pipe or vessel containing pressure fluid. Eplett fails to show a spring elastic valve member guide having at least two spring arms, formed on an inner portion of the insert housing, between which the valve body slides and arranged with free spring arm ends thereof in a region of the valve seat. In contrast, the "spider arms" 21 disclosed in Eplett are fixed to the valve body and are not formed on an inner portion of the housing body, as is currently claimed. Such a valve body as disclosed by Eplett is disadvantageous since it is heavier and therefore is sluggish, narrowly adjustable and loud.

Wildfang discloses a check valve having a core secured to a housing. The core includes guide members for a valving element. Wildfang does not show a spring elastic valve member guide having at least two spring arms arranged with free spring arm ends thereof in a region of the valve seat as is currently claimed in claim 1.

The backflow preventer of the present invention provides considerable advantages. Since the spring arms are formed on an inner portion of the insert

housing, the valve body can be made lighter. As shown in Fig. 3 of the present invention, the backflow preventer valve body exhibits a small mass. Thus, the valve member shown in Fig. 3, and currently claimed in claim 1, has no radial guides fixed to it. Therefore, the valve body can be easily affected and unwanted high pulses or variations can be reduced or eliminated.

Claims 2, and 5 – 10 are dependent upon claim 1, which the Applicant believes is allowable over the cited prior art of record for the at least the same reasons provided above.

Based on the arguments presented above, withdrawal of the § 102(b) rejection of claims 1 – 4 and 7 – 10 is respectfully requested.

**Claim Rejections - 35 USC §103(a)**

Claim 4 was rejected in the Action under 35 U.S.C. § 103(a) as obvious over Eplett et al. as applied to claims 1 – 3 and 5 – 10 above, and further in view of GB 661,479. Since claim 4 was cancelled and the subject matter was incorporated into claim 1, the comments below deal with claim 1.

Applicant respectfully traverses the rejection. Further to the arguments presented above, GB 661,479 fails to remedy the deficiencies of Eplett since the proposed combination fails to show a spring elastic valve member guide having at least two spring arms formed on an inner portion of the insert housing arranged

with free spring arm ends thereof in a region of the valve seat. Specifically, GB 661,479 cannot remedy the deficiencies of Eplett since the springs 37 of GB 661,479 are closing springs that bias the valve against a closing seat and are not guides, between which the valve body slides, as is currently claimed.

The Action specifically states that Eplett fails to disclose spring arms formed on an inside surface of the insert housing. One of ordinary skill in the art would not be motivated to combine the pressure relief valve of Eplett with the shock absorber of GB 661,479 since a shock absorber is a closed system and the pressure relief valve opens and closes.

It is well settled that the fact that the prior art can be modified to produce the claimed invention does not make the claimed invention obvious unless there is something in the prior art to suggest the desirability of making such a modification. *In re Laskowski*, 10 USPQ2d 1397, 1398 (Fed.Cir. 1980). A rejection based on Section 103 must rest on a factual basis, with the facts being interpreted without hindsight reconstruction of the invention from the prior art.

The initial duty is on the USPTO to supply the factual basis for the rejection advanced. It is not permissive because of doubts that the invention is patentable, to resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in the factual basis. *Ex parte Haymond*, 41 USPQ2d 1217 (BdPatApp&Int 1996). That is, there must be some logical reason apparent from

positive, concrete evidence of record which justifies a suggestion to modify a prior art structure. See *In re Regel*, 188 USPQ 136, 139 (CCPA 1975). No such evidence to combine the references was provided in this case, which merely combined the two references after reviewing the claimed subject matter, without regard to providing a motivation for the combination or an explanation as to how all of the required claim elements are met.

Furthermore, it is insufficient for the Examiner merely state that it would have been obvious to have provided in Eplett spring arms to be formed on an inside surface of the insert housing for the purpose of guiding its movement. The Examiner also states "It should be noted that in Eplett et al. the spring arms are formed on the valve and by replacing such a construction with arms that are formed on the inside surface of the insert housing is merely an alternative arrangement that is known in the art."

According to MPEP 2144.03[A], "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known....It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." Since the Action cites to no

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reference in support of its rejection, and the MPEP cautions against this type of rejection except where such ratios would be well-known or capable of instant and unquestionable demonstration, the undersigned respectfully request that specific support be cited in support of this rejection, or preferably, that the rejection be withdrawn.

Based on the arguments presented above, withdrawal of the § 103(a) rejection of claim 4 (the subject matter of which is contained in currently amended claim 1) is respectfully requested.

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**Conclusion**

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, including claims 1 – 2, and 7 – 10 is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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